

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD
D R A F T Hearing Minutes October 20, 2010

The Sewage Handling and Disposal Appeal Review Board (the “Board”) met on October 20, 2010, in the Main Floor Conference Room, James Madison Building, Richmond, Virginia. Board members present were Steven Thomas (Chairman), Danny Hatch, Jeanne Hockaday, Gerald Johnson, Peter Brooks and Ronnie Thomas. Assistant Attorney General Ishneila G. Moore, Counsel to the Board, and Donna Tiller, Secretary to the Board were also present.

Witnesses present were: David Fridley, Three Rivers Health District, Jay Conta, VPI/SU Soil Scientist, John Schofield and Marcia Degen, OEHS Engineering Staff, Allen Farmer, Joel Pinnix, PE and Rick Blackwell, PE.

Two appeals were on the docket for the Board’s consideration. Benmonal, LLC/Frank Mohorko, Mathews County and The Tolbert Trust/Susie Fox, Northumberland County. Both Appellants were represented by Counsel, Bevin Alexander.

The first hearing, Benmonal, LLC/Frank Mohorko was called to order at 9:17 am. Mr. Alexander and Mr. Bolling both presented their opening statements.

This hearing began with a question about which denial the Board was hearing. The Mathews County Health Department had issued a denial letter on December 15, 2009 and then on March 17, 2010.

Danny Hatch moved that the Board go into closed session pursuant to Section 2.2-3711.A.7 of the *Code of Virginia* for consultation with legal counsel pertaining to actual or probable litigations, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by counsel. Ronnie Thomas seconded the motion. The motion carried unanimously.

Upon reconvening the hearings, Jeanne Hockaday moved that the Board end its closed session and certify that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from opening meeting requirements by Virginia law were discussed in the closed session to which this certification applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Board. Danny Hatch seconded the motion. The motion carried unanimously.

Gerald Johnson requested that the Board’s Counsel, Ishneila Moore read the Board’s motion that the denial letter applicable to this Board would be the March 17, 2010 denial letter and that the Appellant appealed under *Code of Virginia* § 32.1-163.6. Professional engineering of onsite treatment works. Danny Hatch seconded the motion. The motion carried unanimously.

After hearing the presentations, evidence and testimony from witnesses, Danny Hatch moved that the Board go into closed session pursuant to Section 2.2-3711.A.7 of the *Code of Virginia* for consultation with legal counsel pertaining to actual or probable litigations, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by counsel. Gerald Johnson seconded the motion. The motion carried unanimously.

Upon reconvening the hearings, Jeanne Hockaday moved that the Board end its closed session and certify that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from opening meeting requirements by Virginia law were discussed in the closed session to which this certification applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Board. Danny Hatch seconded the motion. The motion carried unanimously.

Danny Hatch asked that Ishneila Moore, Counsel to the Board, read the Board's motion to uphold the decision to deny the permit on the basis that the soil is saturated and that the design is not appropriate for the particular soil characteristics of the site. Gerald Johnson seconded the motion. The motion carried by a vote of 4-2. In favor: Gerald Johnson, Ronnie Thomas, Steve Thomas and Danny Hatch. Opposed: Peter Brooks and Jeanne Hockaday.

Chairman Steve Thomas stated that Mr. Alexander, due to time from today's hearing, requests to postpone The Tolbert Trust/Susie Fox appeal to the next available date and that he would contact Donna Tiller, Secretary on that request.

The hearing adjourned at 10:45 pm.

Donna Tiller, Secretary to the Board

c: Robert W. Hicks
Allen Knapp